

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LARRY WAYNE JOHNSON, #17065210
Plaintiff,

v.

OFFICER JOHN THOMAS, Officer,
Defendant.

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CIVIL ACTION NO. 3:18-CV-0468-M-BK

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Plaintiff filed objections, and the Court has made a *de novo* review of those portions of the proposed Findings and Recommendation to which objection was made. The objections are overruled, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.


IT IS THEREFORE ORDERED that Plaintiff's claims seeking to enjoin his pending state criminal case and requesting the return of the property seized at the time of his arrest be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction, FED. R. CIV. P. 12(h)(3), and that Plaintiff's loss of property claim during booking be **DISMISSED WITH PREJUDICE** as frivolous, 28 U.S.C. § 1915(e)(2)(B).

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this

action would present no legal point of arguable merit and would, therefore, be frivolous.

Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).¹ In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED this 23rd day of May, 2018.



BARBARA M. G. LYNN
CHIEF JUDGE

¹ Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.